

IN THE MATTER OF:)
)
North Dakota State Board of Medical)
Examiners-Investigative Panel B,)
)
Complainant,)
)
vs.)
)
George S. Hsu, M.D.)
)
Respondent.)
.....)

On July 21, 2003, the Board of Medical Examiners ("Board") requested the designation of an administrative law judge ("ALJ") from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the matter of George S. Hsu, M.D. With the request, the Board sent the Amended Complaint filed by John M. Olson, Special Assistant Attorney General, counsel for the Board's Investigative Panel B, dated July 10, 2003. On July 23, 2003, the undersigned ALJ was designated to preside.

On September 11, 2003, Mr. Olson filed a Second Amended Complaint ("Complaint"). The Complaint cites as grounds for administrative action allegations of violation of N.D.C.C. § 43-17-31, specifically alleging that Dr. Hsu has engaged in a continued pattern of inappropriate care within the meaning of N.D.C.C. § 43-17-31(21), in regard to seven specific patients, and that he lacked appropriate documentation in medical records for diagnoses, testing, and treatment of those patients.

On July 30th, the ALJ issued a Notice of Hearing. The hearing was rescheduled three times. The November 4, 2003, Notice of Rescheduled Hearing scheduled a hearing for November 21, 2003. The hearing was held as rescheduled on November 21, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel B was represented by Mr. Olson. Dr. Hsu was present at the hearing. He was not represented by an attorney at the hearing. Mr. Olson called three witnesses to testify, Dr. Hsu, Dr. Rhonda L. Ketterling, and Dr. Craig Jonathan Lambrecht (*see* exhibits B, 2, and 7, respectively, for *Curriculum Vitae*). Dr. Hsu also testified in his own behalf but called no additional witnesses. Mr. Olson offered 15 exhibits (1-15), all of which were admitted. Dr. Hsu offered nine exhibits (exhibits A-I), all of which were admitted. *See* attached exhibit lists (Investigative Panel B provided a list of all of the exhibits it offered. The ALJ prepared a list of the exhibits offered by Dr. Hsu).

At the close of the hearing the ALJ heard oral argument from Mr. Olson and Dr. Hsu.

Based on the evidence presented at the hearing and the oral argument of the parties, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Dr. Hsu is a physician currently licensed to practice medicine in North Dakota under the provisions of N.D.C.C. ch. 43-17. Dr. Hsu was first licensed by the Board to practice medicine in North Dakota in 1985. Exhibit 1. He has been continuously licensed to practice since that time.

2. Dr. Hsu has been in the private practice of medicine since 1987 in Elgin and Glen Ullin, North Dakota. He has hospital privileges at Jacobson Memorial Hospital in Elgin ("the Hospital"). *See* exhibit B, *Curriculum Vitae* of Dr. Hsu.

3. From July 2001 through June 2003, Dr. Hsu provided inappropriate or substandard medical care as a physician to seven patients, O.M., B.H., E.B., K.K., G.H., M.M., and L.M. Dr. Ketterling found that Dr. Hsu provided substandard or inappropriate care to patients O.M., B.H., and E.B. Dr. Ketterling completed her review of patient records and submitted a report on September 7, 2001. Exhibit 3. Dr. Lambrecht found that Dr. Hsu provided substandard or inappropriate care to patients O.M., B.H., E.B., K.K., G.H., M.M., and L.M. Dr. Lambrecht completed his review of six patient records and submitted a report on June 24, 2003. Exhibit 8. Dr. Lambrecht completed his review of the seventh patient's records and submitted a report on August 25, 2003. Exhibit 9. Dr. Ketterling practices internal medicine in the MeritCare Health System, Fargo. She was a general internist for 14 years in Rugby North Dakota. Dr. Lambrecht practices emergency medicine in the Medcenter One Health System in Bismarck. Dr. Lambrecht served in the military with Dr. Hsu and is Dr. Hsu's friend.

4. In regard to patient O.M., Dr. Ketterling found that substandard or inappropriate care was provided by Dr. Hsu. Exhibit 3. O.M. was an 80-year-old female patient admitted to the Hospital on July 31, 2001. After Dr. Ketterling filed her September 7, 2001, report, additional medical records for O.M. were provided. Those records show that much of Dr. Hsu's dictation on history and physical examination and other notes were not completed until October 2, 2001. Dr. Lambrecht also found that substandard or inappropriate care was provided to O.M. by Dr. Hsu. Exhibit 8. Even after reviewing the additional medical records and listening to Dr. Hsu's testimony at the hearing, Dr. Ketterling found substandard or inappropriate care, as did Dr. Lambrecht. It appears that when O.M. was transferred to the Mayo Clinic, Dr. Hsu had not yet dictated his history and physical and other notes on her. Although Dr. Hsu claims he must have sent some sort of note, handwritten or otherwise, with O.M. when she was transferred, there is no evidence of a discharge summary or other note being sent along with O.M. Dr. Ketterling found that Dr. Hsu's handling of

O.M.'s hypotension and bradycardia was inappropriate and substandard and noted that Dr. Hsu did not take into consideration other possible etiologies for O.M. She also noted a lack of testing and work-up with regard to O.M. by Hsu. However, the most glaring aspect of O.M. medical care by Dr. Hsu was Dr. Hsu's documentation of his care of O.M., being primarily very tardy but also nonexistent to some extent. The complete medical records of patient O.M. are exhibit 4.

5. In regard to patient B.H., Ketterling found that substandard or inappropriate care was provided by Dr. Hsu. Exhibit 3. B.H. was a 44-year-old male patient admitted to the Hospital on August 6, 2001. Dr. Lambrecht also found that substandard or inappropriate care was provided to B.H. by Dr. Hsu. Both Dr. Ketterling and Dr. Lambrecht agree that B.H. should never have stayed in the Hospital but should have been transferred immediately to a tertiary care center in Bismarck and placed in intensive care. On August 8, Dr. Patel, after discussion with the patient's mother, transferred B.H. to Bismarck, where he later died. Again, the most glaring aspect of B.H.'s care by Dr. Hsu was Dr. Hsu's documentation of his care of B.H., being primarily very tardy but also nonexistent to some extent. Dr. Hsu did not dictate his history and physical and other notes in regard to B.H. until October 15, 2001. Further, there was no process for B.H. that would include a differential diagnoses beyond heat stroke. Exhibit 8. The treatment of B.H. was suspect (antiquated) and may have hurt the patient more than helped him. Peritoneal lavage was performed on B.H. by Dr. Hsu, but there is no indication of informed consent being obtained and this procedure is not in the usual genre of family physicians. There was also no record of informed consent about the family stating it did not want a transfer of B.H. for intensive care in Bismarck, as Dr. Hsu claimed. The complete medical records of patient B.H. are exhibit 5.

6. In regard to patient E.B., Dr. Ketterling found substandard or inappropriate care was provided by Dr. Hsu. Exhibit 3. E.B. was a 61-year-old male patient admitted to the

Hospital on August 4, 2001. Dr. Lambrecht also found that substandard or inappropriate care was provided to E.B. by Dr. Hsu. Exhibit 8. The diagnosis for E.B. was acute CVA. E.B. was treated with heparin without a prior CAT of the head. A CAT of the head was done on August 6, however, which was negative for acute intracranial pathology. There was no documentation of full disclosure to the patient of Dr. Hsu's decision to institute heparin therapy without prior imaging and the potential for lethal consequences. Again, documentation of the history and physical and other notes is tardy and nonexistent to some extent. Dr. Hsu did not dictate his notes on E.B. until October 2, 2001. The complete medical records of patient E.B. are exhibit 6.

7. In regard to patient K.K., Dr. Lambrecht found substandard or inappropriate care was provided by Dr. Hsu. Exhibit 8. Patient K.K. was a 78-year-old male admitted to the Hospital on February 25, 2003, with a diagnosis of acute anterior myocardial infarction with a history of severe non-insulin-dependent diabetes mellitus. No heparin or low molecular weight heparin was given to the patient. There was no contraindication to giving heparin. Dr. Hsu said that K.K. refused heparin (*see* Progress Note for 2/26), that he refused to be treated for heart attack and that he refused to be transferred to Bismarck. The patient was put in ICU even though he was code level II. The patient also experienced PVCs which were controlled with IV Lopressor which is not an approved treatment for the control of PVCs. Dr. Lambrecht's chief complaint in regard to Dr. Hsu's care of K.K. was that the care went half way and that not all that could have been done for K.K. was done. There was no indication in the medical records other than a nurse's note that the risks of refusing treatment were explained to K.K. and that he voluntarily refused treatment. K.K. died in the Hospital on March 1. Dr. Hsu's physician's assistant dictated the history and physical on February 28, 2003, but Dr. Hsu did not dictate the discharge summary until April 21, 2003. The complete medical records for patient K.K. are exhibit 10.

8. In regard to patient G.H., Dr. Lambrecht found substandard or inappropriate care was provided by Dr. Hsu. Exhibit 8. G.H. was an 80-year-old female nursing home patient admitted to the Hospital on March 3, 2003, with hypotension and decreased level of responsiveness. A nursing home is adjoining the hospital. G.H. was a complicated patient who was unstable with multi-symptom organ system problems. At first there was concern that G.H. was admitted at 0745 and was not seen until 1730, but a nursing home note indicates that Dr. Hsu saw her at the nursing home just prior to admittance at the Hospital. However, there was not adequate documentation of that in the Hospital medical records. Dr. Lambrecht was concerned that there could have been more therapy with regard to this patient even though she was on code level II status. After her family was contacted about the critical situation with G.H., her status was changed to code level III, she was given care for comfort measures only, and she died on March 5. Dr. Lambrecht said that he considered the medical care with regard to this patient borderline substandard or inappropriate but that he would include it as part of a series of substandard care. The complete medical records (the hospital and the nursing home) are exhibit 11. Dr. Hsu's dictation on the physical and history of this patient occurred on March 4, 2003. His discharge summary occurred on April 21, 2003.

9. In regard to patient M.M., Dr. Lambrecht found substandard or inappropriate care was provided by Dr. Hsu. Exhibit 8. Patient M.M. was a 94-year-old female admitted to the Hospital on April 2, 2003, with chief complaints of confusion, general back pain and abdominal pain. The admitting diagnoses listed were acute confusion, acute urinary retention, dehydration, and diffuse pain and possible CVA. The patient eventually died and the cause of death was listed as acute CVA. After consulting with the family it was agreed to transfer the patient to a nursing home on a code level III status but the patient died prior to this being accomplished. Dr. Lambrecht testified that it is difficult to determine what was really wrong with this patient. He said that this

was a complicated patient with a difficult presentation. He said that there was no treatment or diagnostic pattern demonstrating differential diagnoses and management to reflect that the patient was being managed in any coherent way. He said that at the least a differential diagnoses should have been completed. Dr. Hsu's orders were predominately verbal orders and it is difficult to track the thought process in his management of the patient. The patient was admitted on April 2 at 1020, verbal orders were given later that day at 1425, but Dr. Hsu did not see the patient until April 3. When Dr. Lambrecht reviewed the medical records the progress notes did not include a physical examination. Dr. Lambrecht had concerns about the poor documentation and poor testing done with regard to this patient. The complete medical records of M.M. are exhibit 12. The discharge summary on M.M. was dictated on April 23, 2003. The history and physical was also dictated on that day.

10. In regard to patient L.M., Dr. Lambrecht found substandard or inappropriate care was provided by Dr. Hsu. Exhibit 9. Patient L.M. was a 73-year-old male admitted to the Hospital on June 20, 2003. The patient presented with symptoms suggestive of a TIA or early stroke. Specifically, he had slurred speech and confusion with numbness in both arms. The symptoms had been present for almost 24 hours. Dr. Hsu saw the patient in a timely fashion in the ED and admitted the patient to the Hospital. He started the patient on intravenous heparin without doing a prior CAT. The complete medical records of patient L.M. are exhibit 13. The admission diagnoses for this patient was Acute Ischemic Cerebrovascular Accident. Dr. Hsu said that he discussed heparin therapy with the patient and his daughter and they decided to proceed with it. However, there is no information in the medical records regarding the content of the discussion with the patient and his daughter. The disclosure of the potential lethal risk of heparin without a diagnostic CAT of the head prior to heparin administration was not

documented. The admission orders did not include ECG, chest x-ray, or telemetry. Follow-up testing instructions did not include carotid dopplers or cardiac echo.

11. On October 5, 2001, the Hospital's administrator suspended Dr. Hsu from the medical staff for failure to "comply with the rules and regulations concerning your documentation and ...[untimely completing] your charts." Exhibit 14. He was suspended "until such time as you complete your charts or within seven days." *Id.* The administrator further stated, "[i]f the charts are still not completed at that time, I will be forced to send a letter to the Board of Medical Examiners concerning this matter." *Id.* On November 13, 2001, the Hospital's administrator wrote to Rolf Sletten regarding the basis for suspension of Dr. Hsu. Exhibit 15. He said, that as of September 14, 2001, Dr. Hsu had 35 "H&Ps" that needed to be done and 23 "Discharge Summaries." *Id.* He said that Dr. Hsu "did dictate some of the charts but did not complete all of them." *Id.* He further said that Dr. Hsu "[w]hile being on suspension and trying to dictate, he did have five other charts that did become past due," but he did complete those within seven days. *Id.* The administrator noted that Dr. Hsu was reinstated to Medical Staff on October 15, 2001. *Id.*

12. Dr. Hsu admitted to problems with documentation but asserted that his problem was essentially a problem of timeliness, not substance. He also asserted that proper and timely documentation was more associated with billing and had little if anything to do with patient care. The evidence indicates both the substance of documentation (data reporting) and the timeliness for documentation are problems for Dr. Hsu.

13. Both Dr. Ketterling and Dr. Lambrecht testified about the importance to patient care of documenting, both as to appropriate substance and as to the need for timeliness. They both testified that Dr. Hsu in his practice of medicine was severely lacking in this regard.

14. The evidence shows, and Dr. Lambrecht acknowledged, that Dr. Hsu is an intelligent and capable physician.

ANALYSIS

Dr. Hsu does not seem to recognize that he is not an island. He tends to gauge whether he gives proper medical care by results rather than proper protocols. He tends to believe that the end result justifies the procedures used. To a large extent, it appears, Dr. Hsu has been lucky. Either that or he is extremely talented and wise. The evidence at this hearing does not show that he is a great physician, however.

Dr. Hsu acknowledged at the hearing that he is "out of step" with what the practice of medicine currently requires for appropriate care of patients in North Dakota. He maintains that he operates on a basis of mutual trust between patient and physician, and that no one has been harmed by the care he has given to patients over the years. It is clear that in this rural health care setting Dr. Hsu is doing what he believes is best to keep down the costs of medical care for his patients. With this purpose, "no harm no foul" seems to be Dr. Hsu's response and his motto in regard to the allegations of inappropriate care. It seems likely that he will continue in his purpose employing his motto until a very unlucky situation arises, or until otherwise directed by the Board.

It is difficult to finally determine if there has been inappropriate medical care when there is not proper documentation, *i.e.*, timely documentation of appropriate substance. Yet, if Dr. Hsu does not perform in this regard, his patients may suffer. Has he performed to date? Have they suffered to date? Perhaps, for the most part, Dr. Hsu has provided adequate medical care, the care required under the circumstances, or at least the care his patients want. But, according to the testimony of one doctor who knows rural medicine and one doctor who knows emergency medicine and knows Dr. Hsu, Dr. Hsu has not provided appropriate medical care in several instances. In reality, though, it is not certain whether anyone has really suffered as a result of the medical care provided Dr. Hsu.

Dr. Hsu believes that his after-the-fact explanations of what occurred, and why, is appropriate care. However, that appears not to be the case in most of the seven cases that are the subject of the Complaint, and likely not for many of the other patients he has cared for over the years. Yet, even if he is right as to the substance of the care he has given his patients, as being appropriate, he presents a disservice to his patients and to others in the medical profession by not providing timely and adequate documentation. About his documentation there is no doubt.

CONCLUSIONS OF LAW

1. Dr. Hsu is currently licensed to practice medicine in North Dakota under the provisions of N.D.C.C. ch. 43-17. Therefore, he is subject to the provisions of ch. 43-17 that regulate the practice of medicine in North Dakota.

2. Under N.D.C.C. § 43-17-30.1, the Board may take a variety of disciplinary actions against licensed physicians in North Dakota for violation of any of the provisions of N.D.C.C. § 43-17-31, including revocation of license.

3. N.D.C.C. § 43-17-31, states, in part, as follows:

43-17-31. Grounds for disciplinary action. Disciplinary action may be imposed against a physician upon any of the following grounds:

21. A continued pattern of inappropriate care as a physician...

4. Within the meaning of N.D.C.C. § 43-17-31(21), inappropriate care means not only the actual medical care provided by the physician but all aspects associated with that care including adequate and timely documentation of the care provided by the physician. Appropriate care means the standard of care currently required for patients by the North Dakota medical community. Inappropriate care is substandard care.

5. The evidence shows, by the greater weight of the evidence, that both as to the actual medical care provided by Dr. Hsu and as to the substance and timeliness of the documentation of the actual medical care provided by Dr. Hsu to, if not as to all, than at least as to most of the seven patients that are the subject of the Complaint, Investigative Panel B demonstrated a continued pattern of inappropriate care.

6. Under N.D.C.C. § 43-17-31.1, the costs of the prosecution of the disciplinary proceeding may be assessed against a physician against whom disciplinary action is imposed.

RECOMMENDED ORDER

The greater weight of the evidence shows that Dr. Hsu violated the provisions of N.D.C.C. § 43-17-31(21) in that he has engaged in a continued pattern of inappropriate care as a physician in North Dakota with regard to the care he has given to the seven patients that are the subject of the Complaint. The ALJ recommends that the license to practice medicine in North Dakota of Dr. Hsu be revoked, unless Dr. Hsu agrees to the practice of medicine in North Dakota under a system of monitoring and review as required by the Board in its discretion. If Dr. Hsu agrees to a system of monitoring and review of his practice of medicine in North Dakota as required by the Board, the ALJ recommends that the Board issue a letter of censure to Dr. Hsu for the violations proven as a result of this hearing on the Complaint and that the letter of censure include a statement of the Board's specific requirements of a system of monitoring and review of Dr. Hsu's practice of medicine in North Dakota.

The system of monitoring and review of Dr. Hsu's practice of medicine in North Dakota shall be in place for a reasonable length of time as determined by the Board to assure future compliance with the law by Dr. Hsu without monitoring and review. At the end of the period of monitoring and review, Dr. Hsu shall be reinstated to full standing as a physician to practice medicine in North Dakota under the provisions of N.D.C.C. Ch. 43-17.

If Dr. Hsu agrees to the imposition of a system of monitoring and review by the Board but later fails to comply with any of the terms and conditions of the system of monitoring and review as specifically required by the Board, the Board may unilaterally take administrative action to revoke Dr. Hsu's license to practice medicine in North Dakota, or take such other administrative action as authorized by N.D.C.C. § 43-17-30.1, subject only to the right of Dr. Hsu to request a hearing to determine whether the Board's further unilateral administrative action was appropriate, *i.e.*, whether, indeed, Dr. Hsu failed to comply with any of specific terms and conditions of the system of monitoring and review required by the Board.

Finally, because of the violations of N.D.C.C. § 43-17-31 proven at the hearing, Dr. Hsu shall pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel B in the investigation and prosecution of this case. The Board shall state the sum Dr. Hsu is to pay along with the means and method of payment in a separate letter attached to the Board's final Order in this matter

Dated at Bismarck, North Dakota, this 26th day of November, 2003.

State of North Dakota
Board of Medical Examiners

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